

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

DEC - 6 2002

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of:

Digital Broadcast Copy Protection

)
)
)
)

MB Docket No. 02-230

COMMENTS OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV") hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹

DIRECTV is the United States' largest provider of satellite-delivered direct-to-home television, and a leading distributor of digital video programming. As such, DIRECTV has a significant interest in the issues raised in the *Notice*.

I. DIRECTV UNDERSTANDS THE NEED TO PROTECT DIGITAL CONTENT

DIRECTV agrees with the Commission's observation in the *Notice* that, at least to some extent, "quality digital programming is being withheld because of concerns over the lack of digital broadcast copy protection."³ Content providers are understandably concerned about the ease with which digital programming may be recorded, copied with virtually no degradation in sound or picture quality, and even retransmitted over the Internet. These piracy concerns make some content providers somewhat more reluctant to provide high-value digital programming to the public than they otherwise would be. Because DIRECTV is committed to providing the

No. of Copies rec'd 074
 List ABCDE

¹ DIRECTV is a wholly-owned subsidiary of DIRECTV Enterprises, LLC, a licensee in the DBS service and a wholly-owned subsidiary of Hughes Electronics Corporation.

² See Digital Broadcast Copy Protection, *Notice of Proposed Rulemaking*, MB Dkt 02-230 (rel August 9, 2002) ("Notice").

Id. at ¶ 3.

highest quality programming and service to its customers, it therefore wishes to ensure that digital copy protection is adequate to alleviate the content providers' concerns about piracy.

Collective action will be necessary to achieve this goal. All parties – equipment manufacturers, broadcasters, multichannel video programming distributors, and content providers – must cooperate if there is to be an effective solution to digital piracy. DIRECTV is hopeful that a private, market-based solution will be possible. If that proves to be impossible, the Commission should strive to implement an effective but minimally intrusive regime to ensure that digital signals remain protected adequately from unauthorized duplication and retransmission.

II. THE ATSC FLAG SHOULD BE IMPLEMENTED

DIRECTV believes that the proposed Redistribution Control Descriptor, as set forth in ATSC Standard A/65A (the “ATSC flag”) provides a basis for effective redistribution protection. Critics who argue that the ATSC flag may prove hackable, or that it may be superseded by better technologies in the future, miss the point. It appears that the ATSC flag is the best single means of protection that is reasonably achievable today. The ATSC flag may be refined and improved over time, but such improvements can be made backwards-compatible. Moreover, the ATSC flag need not, and probably will not, be an exclusive means of digital content protection. If and when better means of protection are developed, they can be layered onto the ATSC flag.

By analogy, the Commission may look to the multiple overlapping means by which U.S. currency is protected from unauthorized duplication. Dollar bills are awash in security devices – watermarks, micro-printing, specialized inks and paper, and the like. None of these protection methods is infallible by itself, but in the aggregate, these various security devices make U.S. currency very difficult to counterfeit. Though any one given measure might be defeated, that

possibility does not render the measure superfluous. Similarly, even if the ATSC flag might prove vulnerable to committed hackers, it still will be an important part of the overall scheme protecting video programming copyrights.

11. REGULATION MAY NOT BE NECESSARY TO IMPLEMENT THE ATSC FLAG

Market forces likely are sufficient to ensure that broadcasters include the ATSC flag where appropriate in their digital signals. Broadcasters contract with content providers for their programming, and copyright holders are perfectly capable of negotiating for guarantees that their copyrighted material will be protected by the broadcaster through inclusion of the ATSC flag or other appropriate means.

The ATSC flag only can be effective if every piece of consumer electronics equipment with a tuner capable of demodulating a digital signal, including televisions and set-top boxes, recognizes and gives effect to the flag. Though some manufacturers currently are resisting this requirement, DIRECTV is hopeful that ongoing negotiations will result in an agreement that is acceptable to all interested parties. The Commission should mandate support of the ATSC flag in consumer electronics equipment only if market forces alone fail to produce the desirable result.⁴

IV. TECHNICAL MATTERS

The *Notice* specifically inquires as to whether and how DBS providers such as DIRECTV will carry the ATSC flag.⁵ DIRECTV has determined that it is technically capable of passing through the ATSC flag along with any digital signal that includes the flag embedded in its own

⁴ The *Notice* seeks comment on the jurisdictional basis for any regulations it might adopt regarding the subject of digital copy protection. While DIRECTV believes that the minimally-intrusive regulatory approach described herein is sound public policy, DIRECTV takes no position regarding the Commission's jurisdictional basis for issuing regulations in this proceeding.

⁵ Notice ¶ 7.

initial broadcast, although DIRECTV engineers are still examining the optimal method of doing so. DIRECTV therefore urges the Commission to leave to the discretion of individual multichannel video programming distributors the specific decisions and details as to how to carry the ATSC flag.

DIRECTV agrees that the ATSC flag should not interfere with a consumer's ability to record DTV content for his or her personal use, or to send DTV content across a personal network consisting of set-top box, DVR, home-theater equipment, and the like, since the ATSC flag is intended only for the control of content redistribution via the Internet and other similar distribution methods.

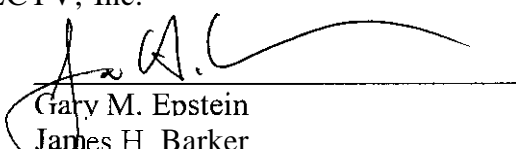
V. CONCLUSION

Implementation of the ATSC flag will encourage the distribution to the public of high-value digital content. Regulation, however, may not be necessary to implement the ATSC flag. The Commission should mandate the support of the ATSC flag in consumer electronics equipment only if market forces fail to ensure such a result.

Respectfully submitted,

DIRECTV, Inc.

By:



Gary M. Epstein

James H. Barker

William S. Carnell

LATHAM & WATKINS

555 Eleventh St., NW

Suite 1000

Washington, D.C. 20004-2505

(202) 637-2200

December 6, 2002